

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 4321 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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SHANTILAL P SHAH & 18 - Petitioner(s)

Versus

KK ASARANI & 1 - Respondent(s)

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Appearance :

MR BY MANKAD for Petitioners

MR LR PUJARI, AGP for Respondent: 1,

None for Respondent : 2,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 06/12/2006

ORAL JUDGMENT

1. Shri B.Y. Mankad, learned counsel for the
petitioners. Shri L.R. Pujari, learned AGP for
the respondent no.1. None for the respondent

no.2 though name of Shri M.I. Patel is shown in the daily board.

2.The short facts necessary for disposal of the present writ application are that for raising an overhead water tank certain tenders were invited, the work was got completed, but after some time, it was detected by the Municipality that the councillors, who had sanctioned the project, in fact, caused loss of sum of Rs. 96,320/- to the Municipality by passing resolution no. 350 dated 17.2.80.

3.The then Director of the Municipality issued a show cause notice to the petitioners on 18.9.89 to show cause that why the said amount of Rs. 96,320/- be not recovered from those councillors jointly or independently. The petitioners submitted their reply. After giving due opportunity of hearing to the petitioners, the then Director Shri Harsh Patra [I.A.S.], in his order dated 11.5.90 observed that the councillors were not liable to anything, they had not committed any wrong and no recoveries could be made against them. He directed

discharge of the notice. However, he further directed that revised audit report be obtained and as per the said revised audit report, liability of the officers/employees of the Municipality be fixed and the money/damages be recovered from the said officers/employees.

4. Thereafter, the present incumbent in his capacity as a Director issued a fresh show cause notice dated 18.1.93 to each of the petitioners to show cause that why recovery be not made against them. The petitioners again submitted their replies, but this time, the Director vide his order dated 13.8.93 [Annexure:D] fixed the liability of as many as 19 persons. Being aggrieved by the said order, the petitioners filed Civil Application No. 78/93 in the Court of the District Judge, Mehsana. The said application was finally disposed of by 3rd Jt. District Judge, Mehsana, vide his order dated 20.10.94. Being aggrieved by the said order, the petitioners are before this Court.

5. Shri B.Y. Mankad, learned counsel for the petitioners submits that the issue of the second

notice to show cause was patently illegal because the first inquiry came to be terminated in favour of the petitioners and if the first notice was discharged and no liberty was reserved by the Director in favour of the Municipality, then on the very same cause of action, yet another notice could not be issued. His submission is that in accordance with the directions of the Director, revised audit report was to be obtained for fixing the liability of the officers or the employees of the Municipality. His submission is that principles of res judicata may not be applicable to an administrative order, but the propriety demands that the principles underlying the said provisions should be made applicable, other wise every battle would become endless.

6. None appears for the Municipality. Shri L.R. Pujari, learned AGP however submits that the State has no role to play in the matter, therefore, he has nothing to say.

7. Undisputely in relation to resolution no. 350 resolving to construct an overhead water tank

and to invite tenders, a notice was issued to the petitioners on 18.9.90. The said notice was replied by the petitioners and others and ultimately, the then Director, vide his order dated 11.5.90 discharged/dropped the notice. He had specifically found that the petitioners and the other councillors were not negligent and were not answerable to the claim made by the Director. Only liberty reserved by the Director was to obtain revised audit report. If the issue was already considered and decided then on the very same cause of action and for recovery of the very same amount to which the petitioners were held not liable, it could not be continued. The action on the part of the Director, who came later in the office cannot be said to be in good taste. Shri Mankad is right in saying that if principles underlying the provisions of res judicata, if are not applied to cases like this, then, the battle would become endless. The Court must see that there is proper check on the authorities in exercising their powers. Conferral of the power on an authority is for

its legal use and is not for its misuse.

8. Subsequent notice dated 18.1.93 could not be held to be valid in view of the fact that under the order dated 11.5.90, the petitioners and other councillors were held not liable to pay the losses.

9. On this short ground and for the reasons aforesaid, I allow the writ application. Consequently, I quash the impugned order dated 13.8.93 passed by the Director of the respondent no.1 and the order dated 20.10.94 passed by the learned 3rd Assistant District Judge, Mehsana in C.M.A. No. 78/93.

10. The petition is allowed. Rule is made absolute.
No costs.

[R.S. GARG, J.]

pirzada/-